

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

---

B & R SUPERMARKET, INC., d/b/a MILAM'S MARKET, a Florida corporation, et al., Individually and on Behalf of All Others Similarly Situated,	X	Case No. 1:17-cv-02738-MKB-JO
	:	
	:	<u>CLASS ACTION</u>
	:	
	:	<b>JOINT STATUS REPORT</b>
	:	
	:	<b>Conference Date: December 13, 2018</b>
VISA, INC., a Delaware corporation, et al.,	:	
	:	
Defendants.	X	

---

Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket) (collectively, "Plaintiffs") and defendants Mastercard International Inc. ("Mastercard"), Discover Financial Services ("Discover"), Visa Inc. and Visa U.S.A. Inc. (together, "Visa"), and American Express Company ("AmEx") (collectively, "Defendants") respectfully submit this joint report in advance of the status conference scheduled for December 13, 2018. The parties agree that there are no issues ripe for discussion with the Court and respectfully request to cancel the December 13 status conference.

**I. PENDING MOTIONS**

**Plaintiffs' Renewed Motion for Class Certification.** Judge Brodie entered an order denying Plaintiffs' motion for class certification without prejudice. (Dkt. No. 644.) Plaintiffs served their renewed motion for class certification ("renewed motion") on July 16, 2018. Pursuant to the Court's August 21, 2018 amended scheduling order, Defendants' response was due October 19, 2018, and Plaintiffs' reply was due November 19, 2018. (*See* Dkt. No. 660.) After the service of Plaintiffs' renewed motion, AmEx informed Plaintiffs of an inadvertent error that resulted in documents being omitted from AmEx's document review pool as explained in

AmEx's October 16, 2018 letter to the Court (Dkt. No. 671). On October 17, 2018, the Court entered an order terminating the renewed motion without prejudice to reinstatement and directing the parties to submit a proposed schedule when the parties agree that they are prepared to resume briefing. (*See* Dkt. No. 672.)

AmEx has now reviewed those additional documents for responsiveness and produced all responsive, non-privileged documents on a rolling basis between October 26, 2018 and November 10, 2018. On November 15, 2018, AmEx produced its privilege logs and confirmed that production was complete. The parties met and conferred on December 4, 2018 and anticipate completing their review of AmEx's additional production on or before December 21, 2018. After the review is complete, Plaintiffs will assess whether the newly produced documents require any additional discovery, expert work or amendments to Plaintiffs' renewed motion and will then meet and confer with the other parties.

**Discover's Motion to Compel Arbitration.** In light of the Court's denial of Plaintiffs' motion for class certification on March 11, 2018 (Dkt. No. 644), and consistent with Discover's position as set forth in previous Joint Status Reports, it is Discover's position that it is proper to wait until Plaintiffs have filed a renewed motion for class certification and the Court has decided that motion before moving to compel arbitration against the approximately 1,200 putative class members with which Discover has valid, enforceable arbitration agreements.

## **II. CASE SCHEDULE**

**Amended Case Schedule.** On August 20, 2018, the parties jointly requested that the current case schedule be amended to extend the briefing on Plaintiffs' renewed motion for class certification and the deadline for Plaintiffs' merits expert reports. (Dkt. No. 659.) The Court granted the parties' request on August 21, 2018. (Dkt. No. 660.) As described above, Plaintiffs' renewed motion for class certification has been terminated without prejudice to reinstatement.

(Dkt. No. 672.) The parties anticipate requesting an amended case schedule after the document review is complete.

### III. STATUS OF DISCOVERY

**Defendants' Production of Transaction Data.** In early 2018, Plaintiffs requested that Defendants provide transaction data for the time period through and including September 30, 2017. After a lengthy meet and confer process, Visa, Mastercard, and Discover largely agreed to produce specific data as requested and AmEx agreed to supplement its prior production of the transaction data for a sample of merchants and produce a series of monthly reports that reflect FLS chargebacks in an aggregate form. Mastercard and Discover completed their productions prior to the filing of the renewed motion for class certification. Visa and AmEx completed their productions later that month. Plaintiffs intend to meet and confer further with AmEx regarding the production of further transaction data.

**Additional Fact Discovery.** As set forth in AmEx's recent letter (Dkt. No. 671), upon the completion of the document review by all parties, the parties have agreed to meet and confer as to whether and what additional fact discovery may be necessary.

**Third-Party Discovery.** During the fact discovery period, Plaintiffs issued subpoenas to numerous third parties, including those that Plaintiffs believe have served as acquirers and/or processors with respect to merchant transactions identified in Defendants' production of transaction data. To date, Plaintiffs have received all anticipated third party data productions.

Respectfully submitted this 6th day of December, 2018, by:

**ROBBINS ARROYO LLP**

s/ George C. Aguilar  
GEORGE C. AGUILAR  
JENNY L. DIXON  
ASHLEY R. RIFKIN  
ERIC M. CARRINO

**CRAVATH, SWAINE & MOORE LLP**

s/ Peter T. Barbur  
PETER T. BARBUR  
DAMARIS HERNÁNDEZ  
825 Eighth Avenue  
New York, NY 10019

600 B Street, Suite 1900  
San Diego, CA 92101  
Telephone: (619) 525-3990  
Facsimile: (619) 525-3991  
gaguilar@robbinsarroyo.com  
jdixon@robbinsarroyo.com  
arifkin@robbinsarroyo.com  
ecarrino@robbinsarroyo.com

**DEVINE GOODMAN RASCO &  
WATTS-FITZGERALD, LLP**

JOHN W. DEVINE  
LAWRENCE D. GOODMAN  
ROBERT J. KUNTZ, JR.  
2800 Ponce De Leon Blvd., Suite 1400  
Coral Gables, FL 33134  
Telephone: (305) 374-8200  
Facsimile: (305) 374-8208  
jdevine@devinegoodman.com  
lgoodman@devinegoodman.com  
rkuntz@devinegoodman.com

**LAW OFFICES OF  
THOMAS G. AMON**

THOMAS G. AMON  
PETER B. PATTERSON, JR.  
733 3rd Avenue, 15th Floor  
New York, NY 10017  
Telephone: (212) 810-2430  
Facsimile: (212) 810-2427  
tamon@amonlaw.com  
ppatterson@amonlaw.com

*Counsel for Plaintiffs B & R Supermarket,  
Inc. (d/b/a Milam's Market), Grove Liquors  
LLC, Strouk Group LLC (d/b/a Monsieur  
Marcel), and Palero Food Corp. and  
Cagueyes Food Corp. (d/b/a Fine Fare  
Supermarket)*

Telephone: (212) 474-1000  
Facsimile: (212) 474-3700  
pbarbur@cravath.com  
dhernandez@cravath.com

*Attorneys for Defendant American Express  
Company*

**ARNOLD & PORTER  
KAYE SCHOLER LLP**

*s/ Robert J. Vizas*

---

ROBERT J. VIZAS  
SHARON D. MAYO  
Three Embarcadero Center, Tenth Floor  
San Francisco, CA 94111  
Telephone: (415) 471-3100  
Facsimile: (415) 471-3400  
robert.vizas@arnoldporter.com  
sharon.mayo@arnoldporter.com

**ARNOLD & PORTER  
KAYE SCHOLER LLP**

MARK R. MERLEY  
MATTHEW A. EISENSTEIN  
KAREN C. OTTO  
LAURA J. BUTTE  
RON A. GHATAN  
601 Massachusetts Avenue, NW  
Washington, DC 20001  
Telephone: (202) 942-5000  
Facsimile: (202) 942-5999  
mark.merley@arnoldporter.com  
matthew.eisenstein@arnoldporter.com  
karen.otto@arnoldporter.com  
laura.butte@arnoldporter.com  
ron.ghatan@arnoldporter.com

**ARNOLD & PORTER  
KAYE SCHOLER LLP**

ROBERT C. MASON  
250 West 55th Street  
New York, NY 10019  
Telephone: (212) 836-8000  
robert.mason@arnoldporter.com

*Attorneys for Defendants Visa Inc. and Visa*

*U.S.A. Inc.*

**WINSTON & STRAWN LLP**

*s/ Jeffrey L. Kessler*

---

JEFFREY L. KESSLER  
EVA W. COLE  
JOHANNA RAE HUDGENS  
KELLI L. LANSKI  
200 Park Avenue  
New York, NY 10166  
Telephone: (212) 294-6700  
Facsimile: (212) 294-4700  
[jkessler@winston.com](mailto:jkessler@winston.com)  
[ewcole@winston.com](mailto:ewcole@winston.com)  
[j hudgens@winston.com](mailto:jhudgens@winston.com)  
[klanski@winston.com](mailto:klanski@winston.com)

**WINSTON & STRAWN LLP**

ELIZABETH P. PAPEZ  
1700 K Street, N.W.  
Washington, DC 20006  
Telephone: (202) 282-5000  
Facsimile: (202) 282-5100  
[epapez@winston.com](mailto:epapez@winston.com)

**WINSTON & STRAWN LLP**

JAMES F. HERBISON  
35 West Wacker Drive  
Chicago, IL 60601  
Telephone: (312) 558-5600  
Facsimile: (312) 558-5700  
[jherbiso@winston.com](mailto:jherbiso@winston.com)

**WINSTON & STRAWN LLP**

SEAN D. MEENAN  
JEANIFER E. PARSIGIAN  
DANA L. COOK-MILLIGAN  
101 California Street  
San Francisco, CA 94111  
Telephone: (415) 591-1000  
Facsimile: (415) 591-1400  
[smeenan@winston.com](mailto:smeenan@winston.com)  
[jparsigian@winston.com](mailto:jparsigian@winston.com)  
[dlcook@winston.com](mailto:dlcook@winston.com)

*Attorneys for Defendant Discover Financial Services*

**PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON LLP**

*s/ Kenneth A. Gallo*

---

KENNETH A. GALLO  
CRAIG A. BENSON  
MICHELLE K. PARIKH  
2001 K Street, NW  
Washington, DC 20006-1047  
Telephone: (202) 223-7300  
Facsimile: (202) 223-7420  
kgallo@paulweiss.com  
cbenson@paulweiss.com  
mparikh@paulweiss.com

*Attorneys for Defendant Mastercard  
International Incorporated*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 6, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all registered parties and attorneys of record.

*s/ George C. Aguilar*  
GEORGE C. AGUILAR

**ROBBINS ARROYO LLP**  
600 B Street, Suite 1900  
San Diego, CA 92101  
Telephone: (619) 525-3990  
Facsimile: (619) 525-3991  
[gaguilar@robbinsarroyo.com](mailto:gaguilar@robbinsarroyo.com)